

Uniformed Service Members

Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 USC §§4301 through 4333)

Who is Covered

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was signed on October 13, 1994. The Act applies to persons who perform duty, voluntarily or involuntarily, in the “uniformed services,” which include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service commissioned corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA. In addition, under the Public Health Security and Bioterrorism Response Act of 2002, certain disaster response work (and authorized training for such work) is considered “service in the uniformed services.”

Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.

USERRA covers nearly all employees, including part-time and probationary employees. USERRA applies to virtually all U.S. employers, regardless of size.

Basic Provisions/Requirements

The pre-service employer must reemploy service members returning from a period of service in the uniformed services if those service members meet five criteria:

- The person must have held a civilian job;
- The person must have given notice to the employer that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable;
- The cumulative period of service must not have exceeded five years;
- The person must not have been released from service under dishonorable or other punitive conditions; and
- The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

The Employment Law Guide is offered as a public resource. It does not create new legal obligations and it is not a substitute for the U.S. Code, Federal Register, and Code of Federal Regulations as the official sources of applicable law. Every effort has been made to ensure that the information provided is complete and accurate as of the time of publication, and this will continue. Later versions of this Guide will be offered at www.dol.gov/compliance or by calling our Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365).

USERRA establishes a five-year cumulative total on military service with a single employer, with certain exceptions allowed for situations such as call-ups during emergencies, reserve drills, and annually scheduled active duty for training.

Employers are required to provide to persons entitled to the rights and benefits under USERRA a notice of the rights, benefits, and obligations of such persons and such employers under USERRA.

USERRA also allows an employee to complete an initial period of active duty that exceeds five years (e.g., enlistees in the Navy's nuclear power program are required to serve six years).

Employee Rights

Under USERRA, restoration rights are based on the duration of military service rather than the type of military duty performed (e.g., active duty for training or inactive duty), except for fitness-for-service examinations. The time limits for returning to work are as follows:

- Less than 31 days service: By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight hour rest period. If this is impossible or unreasonable, then as soon as possible;
- 31 to 180 days: The employee must apply for reemployment no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible;
- 181 days or more: The employee must apply for reemployment no later than 90 days after completion of military service;
- Service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

USERRA guarantees pension plan benefits that accrued during military service, regardless of whether the plan is a defined benefit plan or a defined contribution plan. USERRA provides that service members activated for duty on or after December 10, 2004 may elect to extend their employer-sponsored health coverage for up to 24 months. Service members activated prior to 12/10/04 may elect to extend coverage for up to 18 months. Employers may require these individuals to pay up to 102% of total premiums for that elective coverage. In addition, USERRA prohibits employment discrimination against a person on the basis of past military service, current military obligations, or an intent to serve.

Compliance Assistance Available

The Veterans' Employment and Training Service (VETS) enforces USERRA. However, the law also allows an employee to enforce his or her rights by filing a court action directly, without filing a complaint with VETS.

Compliance assistance information is available on the VETS Web site (www.dol.gov/vets). Specific compliance assistance materials available include: a fact sheet (OASVET 97-3) about USERRA, the notice/poster (www.dol.gov/osbp/sbrefa/poster/userra.htm) to employees of their rights, benefits, and obligations under USERRA, and a non-technical USERRA Guide (www.dol.gov/vets/programs/userra/Right_Act4_2005.pdf) that contains general information about the law. Copies of VETS'

publications, or answers to questions about USERRA, may also be obtained from the local VETS office (www.dol.gov/vets/aboutvets/contacts/main.htm).

Another compliance assistance resource, the *eLaws* Uniformed Services Employment and Reemployment Rights Act (USERRA) Advisor (www.dol.gov/elaws/userra.htm) helps veterans understand employee eligibility and job entitlements, employer obligations, benefits, and remedies under the Act. For additional compliance assistance, contact the Department's Toll-Free Help Line at 1-866-4-USA-DOL.

Penalties/Sanctions

A court may order an employer to compensate a prevailing claimant for lost wages or benefits. USERRA allows for liquidated damages for “willful” violations.

Relation to State, Local, and Other Federal Laws

USERRA does not preempt state laws providing greater or additional rights, but it does preempt state laws providing lesser rights or imposing additional eligibility criteria.